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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

Supreme Court, U.S.
FILED
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JAMES H. McKENNEY,
Clerk

No.

[illegible] INFORMA-
[illegible] ATTORNEY
[illegible] W. MAJOR,
[illegible]

[illegible] Plaintiff
[illegible]

[illegible] OF [illegible] ON THE INFORMA-
[illegible] OF [illegible] ATTORNEY,
[illegible] ELLIOTT W. MAJOR,
[illegible]

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible].

REPLY TO DEFENDANT'S BRIEF FOR
DEFENDANT IN ERROR.

ALBERT D. EDDY,
ROBERT M. STEWART,
FRANK HAGERMAN,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 47.

STANDARD OIL COMPANY OF INDIANA,
PLAINTIFF IN ERROR,

vs.

STATE OF MISSOURI, DEFENDANT IN ERROR.

No. 48.

REPUBLIC OIL COMPANY, PLAINTIFF
IN ERROR,

vs.

STATE OF MISSOURI, DEFENDANT IN ERROR.

REPLY TO SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

Upon November 8, 1911, just as these cases were reached for argument, the State filed a supplemental brief for the first time suggesting that

there should be a dismissal because there was no summons to or severance of the Waters-Pierce Oil Company. As to this it is submitted:

1. The present record does not show whether there was or was not any such severance. The writs of error were allowed and citations issued to both the State and the Waters-Pierce Company and accepted by (Record, 1, 2) the Attorney General. The latter, upon September 21, 1909, signed a stipulation (Record, 484, 485) agreeing to the substitution of himself as informant, in lieu of the former Attorney General, and for the omission in printing of a part of the record. In addition there was filed herein, upon May 24, 1909, the stipulation attached hereto.

For some reason the clerk failed to print this document. Here was a complete and effectual appearance of the Waters-Pierce Company. It therefore knew of the writs of error and has never taken, nor intended to take, any steps in joining in the assignments of error. As a matter of fact it did actually sign a waiver of summons and consent to a severance in this language:

> "Not desiring to join in either writ of error sued out by the Standard Oil Company of Indiana or the Republic Oil Company, service of the citation on behalf of each of said companies, upon writ of error to the Supreme Court of the United States, is hereby accepted this 17th day of March, 1909."

This document seems to have been lost, and if it can be found and certified here will be subsequently printed.

Considering the time when the objection was first made, the court should now presume that when separate writs were allowed below there was a sufficient summons and severance. Moreover, the Waters-Pierce Company, having appeared herein, knew of the writs of error and has neglected and refused to join in the assignments. In addition to this, if permitted, that company will now file a waiver in any form which would meet the approval of the court. This should fully answer the point made. (Masterson *vs.* Howard, 10 Wal., 416.)

2. If a judgment be joint, a severance is necessary. The only reasons ever given for this rule are that the other party is entitled to know whether an appeal or writ of error will be prosecuted and that the appellate court shall not be vexed with successive appeals from the same judgment. (Williams *vs.* Bank, 11 Wheat., 441; Owings *vs.* Kincannon, 7 Pet., 399; Wilson *vs.* Life Insurance Co., 12 Pet., 140; Masterson *vs.* Howard, 10 Wal., 416; Hardee *vs.* Wilson, 146 U. S., 179.)

Here there could not be successive appeals, for the judgment (Record, 337) of December 23, 1908, became final (Record, 459) on March 9, 1909. The Waters-Pierce Company could not now sue

out a writ of error, because the time therefor has expired. Moreover, it has fully performed and accepted the judgment below and has no interest whatsoever in the cases of plaintiffs in error. The State could not be better informed as to the position assumed by that company.

There is nothing technical about a severance or summons. If the party knows of the proceeding and has had an opportunity to join in presenting the errors complained of, it is sufficient. (Masterson *vs.* Howard, 10 Wal., 416; O'Dowd *vs.* Russell, 14 Wal., 402.)

Mere failure to act after receiving notice of an intention of one party to appeal is enough. (O'Dowd *vs.* Russell, 14 Wal., 402.)

If, as in this case, the judgment be severable or so separate and distinct as not to affect the rights of others, the proceedings may be prosecuted without summons or severance. (German *vs.* Mason, 12 Wal., 259; Brewster *vs.* Wakefield, 22 How., 118; City National Bank *vs.* Hunter, 129 U. S., 557; Gulfillan *vs.* McKee, 159 U. S., 303; Cox *vs.* U. S., 6 Pet., 172; Todd *vs.* Daniel, 16 Pet., 521; Haurick *vs.* Patrick, 119 U. S., 156; Milner *vs.* Meek, 95 U. S., 252; Forgay *vs.* Conrad, 6 How., 201.)

Likewise, if one jointly interested has parted with his title. (Mercantile Trust Company *vs.* Kanawha, etc., R. Co., 58 Fed. Rep., 6; Aiken *vs.* Smith, 54 Fed. Rep., 894.)

So one defeated lien claimant can maintain the proceeding without joining others likewise defeated. (Milner *vs.* Meek, 95 U. S., 252.)

Tested by these rules, the judgments against these plaintiffs in error are separate and distinct and nothing in which the Waters-Pierce Company has any interest.

Respectfully submitted,

ROBERT W. STEWART,
ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Plaintiffs in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

STANDARD OIL COMPANY (OF INDIANA), *Plaintiff in Error,*

vs.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, *et al., Defendants in Error.*

REPUBLIC OIL COMPANY, *Plaintiff in Error,*

vs.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, *et al., Defendants in Error.*

Stipulation.

Separate writs of error were sued out in above-entitled cause, although in the Supreme Court of Missouri there was but one case against both the plaintiffs in error and one entry of a judgment, and the testimony was taken in one case.

It is therefore agreed that but one transcript need be filed and printed in this court. The cases

may be argued and submitted together and upon the same briefs.

Dated May 18, 1909.

(Signed) ELLIOTT W. MAJOR,
Attorney General.

(Signed) ALFRED D. EDDY,

(Signed) FRANK HAGERMAN,
Attorneys for Standard Oil Company (of Indiana) and Republic Oil Company.

(Signed) H. S. PRIEST,
Attorney for Waters-Pierce Oil Company.

Endorsed: File Nos. 21,665 and 21,666. Supreme Court U. S., October Term, 1908. Term Nos. 869 and 870. Standard Oil Company of Indiana, plaintiff in error, *vs.* State of Missouri on information of H. S. Hadley, Attorney General. Republic Oil Company, plaintiff in error, *vs.* State of Missouri on information of H. S. Hadley, Attorney General. Stipulation that cases may be heard together. Filed May 24, 1909.